No. 75-1274

APR 7 1976
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1975

WATKINS MOTOR LINES, INCORPORATED, a Florida corporation; THE INSURANCE COMPANY OF NORTH AMERICA, a Pennsylvania corporation; and WACO FIRE AND CASUALTY INSURANCE COMPANY, a Georgia corporation,

Petitioner,

vs.

ZERO REFRIGERATED LINES, a Texas corporation and CONTINENTAL NATIONAL ASSURITY GROUP, an Illinois corporation,

Respondent,

and

CONTINENTAL CASUALTY COMPANY and BANKERS AND SHIPPERS COMPANY OF NEW YORK,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Respondents Zero Refrigerated Lines, Continental Casualty Company, and Bankers and Shippers Company of New York respectfully pray that this Court decline to issue a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered on August 11, 1975.

ARGUMENT

The Petitioners seek a hearing in this Court on the validity of indemnity agreements between common carriers which interchange equipment and drivers pursuant to ICC Regulations, 49 C.F.R. §1057.5, after this Court has recently held that such agreements are valid and enforceable, *Transamerican Freight Lines, Inc.* v. *Brada Miller Freight Systems,* 96 S. Ct. 229 (1975), thereby resolving the only issue of significance urged in the pending petition. Petitioners make this request even though this case does not involve any of the ICC regulations previously relied upon by a minority line of cases to nullify indemnity agreements in other types of equipment leases, 49 C.F.R. §§1057.3(a) and 1057.4(a)(4). All of Petitioners' arguments have been dealt with and answered by both the trial court, 381 F. Supp. 363 (N.D. Ill., 1974), and by the Seventh Circuit Court of Appeals (see in particular pp. 12a-13a of the Petition), 525 F.2d 538 (7th Cir., 1975).

The decision of the Seventh Circuit in this matter foreshadows the reasoning of this Court in *Transamerican,* where the Court cited with approval both the District Court and Court of Appeals decisions in the present case, 96 S. Ct. 229, 233 (note 6). The holding of the Seventh Circuit is also consistent with the decisions of the other Circuit Courts of Appeal, holding that there is nothing in the ICC equipment lease regulations or in public policy which invalidates an indemnity agreement in an interchange agreement between common carriers.

Petitioners now contend that the interchange agreement which Watkins entered into with Zero in order to deliver a load of Girl Scout cookies to Tucson, Arizona "should not be permitted" (Petition, p. 11). Watkins appears to be arguing that this Court should not permit Watkins to contract (and obtain insurance for such contract) to enable it to carry goods which it had contracted to deliver to the point of destination pursuant to ICC regulations. Obviously, it is not Watkins which is now repudiating its own contractual agreement (under which at least 750 exchanges of equipment have been made), but it is in fact Watkins' insurers who seek to avoid a loss which they expressly agreed to insure (Petition, p. 15a).

CONCLUSION

It is therefore respectfully submitted that the Petition for Certiorari should be denied.

Respectfully submitted,

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